IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 119 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT ELECTRICITY BOARD,

Versus

KOKILABEN KANUBHAI PATEL

Appearance:

1. First Appeal No. 119 of 1981

MR MD PANDYA for Appellant No. 1

NOTICE SERVED for Respondent No. 1-4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/07/2003

ORAL JUDGEMENT

This First Appeal by the Gujarat Electricity Board has been filed being aggrieved and dissatisfied by the judgment and decree dated 25-9-1980 passed by the 2nd Joint Civil Judge (S.D.), Ahmedabad (Rural) at Narol in

Civil Suit No.99 of 1978 whereby decree of Rs.67,500/-with interest @ 6% per annum and costs was passed in favour of the plaintiff.

2. The facts in short are that on 26-12-1979 one Kanubhai Dhulabhai Patel along with Fulaji Galaji were going from the field situated in the sim of Dhamtavan Village to take lunch. At that time, as simda tree branches fell down, some branches were intermingled with the aluminium wire of the grid line as a result of which, the live wire bent down and fell on Kanubhai causing death of the deceased. Fulaji Galaji, who was handling the said wire, also received injuries on his right hand and right leg. Therefore, heirs and legal representatives of the deceased Kanubhai Dhulabhai Patel filed a suit against the appellant-Board claiming compensation of Rs.75,000/-. The appellant resisted the claim petition. At the end of trial, after giving opportunity to the parties concerned, learned 2nd Joint Civil Judge (S.D.), Ahmedabad (Rural) vide judgment and decree dated 25-9-1980 partly decreed the suit of the original plaintiffs-present respondents which is giving rise to the present First Appeal.

3. Heard learned counsel for the appellant, Mr.M.D.Pandya at length. None appeared on behalf of the respondents though duly served.

4. It is mainly argued by Mr.Pandya that the learned Judge has committed an error in applying the principle of maxim of res ipsa loquitur to the facts of the present case and shifted the burden of proof on the defendant. It is further argued that finding of issue Nos.1 and 2 that the live wire had fallen from the electric pole on Kanubhai and death of Kanubhai was caused due to fall of said live wire on him is not correct looking to the evidence on record. The learned Judge ought to have accepted the true version of the defendant that due to cutting down of branches of simda tree, some branches were intermingled with the aluminium wire of the grid line as a result of which, the live wire which had bent down fenched the iron wire and since the live wire had fallen on Kanubhai, current passed through it causing the death of the deceased and hence, there is no negligence on the part of defendant. It is further argued that it is a pure case of accident as necessary steps for proper maintenance of the grid line were taken by the appellant-Board and, therefore also, the appellant was not liable to satisfy the award.

5. On the point of quantum, Mr.Pandya has argued

that amount of Rs.4,500/- awarded by the Court is on the higher side considering the evidence on record. According to him, due to death of the deceased, there would not be any substantial decrease in the income from agriculture. It is also contended that multiplier applied to the present case is also not proper and, therefore, the judgment and decree is required to be quashed and set aside.

6. To prove the case, the respondents-original plaintiffs examined various witnesses namely, Dhulabhai Narotham, father of the deceased Kanubhai, at Ex.22; Fulaji Galaji Thakore, who received injuries while trying to save the deceased at Ex.43; Chunilal Mohanlal Patel, panch witness at Ex.51 and Kanubhai Umedbhai, an eye witness, at Ex.53. Whereas the appellant-original defendant examined Vasudev Vithalbhai Bhavsar, Deputy Engineer of Board at Ex.56 and Maheshkumar Virjibhai Patel, a Helper serving with the Board posted in the area where accident took place at the relevant time, at Ex.57.

7. It appears from the record that the incident has taken place in the field of deceased Kanubhai Dulaji Patel situated in the Sim of Dhamtavan Village. It also appears from the oral evidence of plaintiff's witness No.3, Dhulabhai Narottamdas, that grid-line is passing through the field of deceased-Kanubhai and there were live wires in that line out of which, four are Aluminium wires and one is iron wire. The iron wire was broken at a distance of two feet away from the D.P. Sub Station and that wire fell on the deceased-Kanubhai when he was going for lunch with Fulaji as a result of which, he succumbed to the electric shock. To prove this, plaintiffs have relied upon the certificate issued by the Civil Surgeon Ex.54 which shows that dead body of the deceased was brought for post-mortem on 26-12-1977 wherein cause of death was shown to be electric shock. Even eye witnesses have also categorically deposed to that effect and hence, it was rightly held by the Court below that death was caused due to electric shock. Hence, only question to be dealt with by the Court below was the negligence part. As the defense of the present appellant was of denial nature and as no specific plea was taken regarding falling of simda tree branches on the grid-line and said branches intermingling with the aluminium wire of the grid line, no specific issue was framed by the court below. However, for the first time it has come out with said plea in the oral evidence which reflects from the statement at Ex.12 and judgment type page 9. If the say of the defendant that incident has taken place as a result of branches of simda tree

intermingled with the wire and some branches of said tree had fallen down and on account of that, live wire had become loose and had bent down and, therefore, it has touched with the said wire and so, electric current had passed through that wire, then also, it cannot be said that the incident was a case of pure accident. It was the duty of the Board to see that branches of the tree of both sides of the Grid-line are cut in time. According to this witness, incident has taken place due to falling of simda tree on the grid line. Even panchnama of scene of offence speaks the same and, therefore, the conclusion arrived at by the court below that looking to the incident in question, principle of maxim of res ipsa loquitur will be applying in this case is just and proper. While doing so, court below has taken into consideration all aspects of the matter including oral evidence of the defendant which has been raised for the first time while recording oral evidence. Hence, burden of proof has been shifted on the defendant to prove that there was no negligence on its part or its officers and that they have taken proper care in seeing that iron wires are not broken down and fall accidently on the passers-by. However, the defendant has failed to prove the same. Besides, it is clear from their own evidence that they were negligent and were not taking any care in cutting the branches of trees in time as a result of which, incident has occurred and, therefore, it can be safely held that it was only due to negligence of the Board.

8. Since the learned counsel for the appellant-Board, Mr.Pandya, has raised the contention on the issue of quantum, though not argued much, it is required to be dealt with by this Court. It is required to be borne in mind that deceased died at the age of 82 years leaving behind wife, one minor daughter aged 2-3 years and aged parents. It appears from the evidence of plaintiff No.3 who is the father of the deceased that while recording his evidence in the year 1980, he was aged 81 years which means that at the time of incident, he might be 79 years of age. It is established from Exs.27 to 38 that deceased was cultivating 30 bighas of family agricultural land and annual agricultural income of the family was Rs.25,000/-to Rs.30,000/-. Considering entirety of the evidence, Court below has come to the conclusion that contribution of Kanubhai from agricultural income would come to a minimum of Rs.6,000/-and deducting Rs.1500/- towards his personal expenses had Kanubhai been surviving, the Court has taken into consideration Rs.4,500/-per annum as the income of the deceased which, in any circumstances, cannot be said

to be on the higher side and looking to the age of the deceased, multiplier of 15 is also appears to be proper. Court below has not awarded any amount under any other heads like shock and suffering caused to the widow and minor daughter and also towards consortium, etc.

9. Considering the entirety of circumstances narrated hereinabove, the amount awarded by the court below cannot be said to be improper and, therefore, I am not interfering with the same.

10. In view of the above, appeal fails and is hereby rejected.

(R.P.DHOLAKIA,J.)

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